

BY:

LEON ROBINSON,
Plaintiff

v.

THOMAS MENINO¹, PAUL F.
EVANS, JAMES WYSE,
MICHAEL PRIMM, JOHN A.
MARTEL, WAYNE ROCK,
GARRETT MITCHELL,
CHARLES HARDY, AMERICAN
BROADCASTING CO., INC.,
HEARST-ARGYLE STATION
INC., WCVB TV (Channel 5,
Boston) DENNIS MCCARTHY
AND JOHN DOE I,
Defendants

04 CV 11023 RCL

NOTICE OF REMOVAL
(Pursuant to 28 U.S.C. §1441)

Defendants Paul F. Evans, James Wyse, Michael Primm, John Martel, Wayne Rock, Garrett Mitchell and Charles Hardy petition, pursuant to 28 U.S.C. §1441, for removal from the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts the action entitled *Leon Robinson v. Thomas Menino et al.*, currently pending in Suffolk County as Civil Action No. 02-0377.

1. This action alleges that Defendants violated the federal civil rights of Plaintiff, Leon Robinson, by unlawfully entering his residence without a valid search warrant nor had his consent or permission to allow defendants into his residence on February 21, 2001. Plaintiff further makes claims for the illegal seizure of plaintiff's possessions and for photographic images taken of his residence.

¹ Mayor Thomas Menino has been voluntarily dismissed from the case pursuant to Rule 41(a)(1)(i) of the Massachusetts Rules of Civil Procedure.

Commonwealth of Massachusetts
SUFFOLK SUPERIOR COURT

Case Summary
Civil Docket

05/26/2004
02:40 PM

SUCV2004-00377
Robinson, A22594 v Menino Comr et al

File Date	01/28/2004	Status	Disposed: transfered to other court (dtrans)
Status Date	05/26/2004	Session	D - Civil D
Origin	1	Case Type	E96 - Prisoner Cases
Lead Case		Track	F

Service	04/27/2004	Answer	06/26/2004	Rule12/19/20	06/26/2004
Rule 15	06/26/2004	Discovery	11/23/2004	Rule 56	12/23/2004
Final PTC	01/22/2005	Disposition	03/23/2005	Jury Trial	No

Plaintiff

Leon Robinson, A22594
Old Colony Correctional Center
1 Administration Road
Bridgewater, MA 02324
Active (prisoner) 01/28/2004 Notify

Defendant

Thomas Menino Comr
Service pending 01/28/2004

Defendant

John Doe I
Service pending 01/28/2004

Defendant

James Wyse
Served: 04/15/2004
Served (answr pending) 05/03/2004

Private Counsel 648701

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Active 05/26/2004 Notify

Commonwealth of Massachusetts
SUFFOLK SUPERIOR COURT

Case Summary
Civil Docket

05/26/2004
02:40 PM

SUCV2004-00377
Robinson, A22594 v Menino Comr et al

Defendant

Michael Primm
Served: 04/15/2004
Served (answr pending) 05/03/2004

*** See Attorney Information Above ***

Defendant

John A Martel
Served: 04/15/2004
Served (answr pending) 05/03/2004

*** See Attorney Information Above ***

Defendant

Wayne Rock
Served: 04/15/2004
Served (answr pending) 05/03/2004

*** See Attorney Information Above ***

Defendant

Garrett Mitchell
Served: 04/15/2004
Served (answr pending) 05/03/2004

*** See Attorney Information Above ***

Defendant

Charlie Hardley
Served: 04/15/2004
Served (answr pending) 05/03/2004

*** See Attorney Information Above ***

Defendant

American Broadcasting Co Inc.
as amended
Service pending 03/24/2004

Commonwealth of Massachusetts
SUFFOLK SUPERIOR COURT

Case Summary
Civil Docket

05/26/2004
02:40 PM

SUCV2004-00377
Robinson, A22594 v Menino Comr et al

Defendant
Hearst-Argyle Station Inc.
as amended
Service pending 03/24/2004

Defendant
WCVB TV (Channel 5,Boston)
as amended
Service pending 03/24/2004

Defendant
Dennis McCarthy (As amended)
Service pending 03/24/2004

Defendant
John Doe I (As amended)
Service pending 03/24/2004

Defendant
Paul F. Evans
as amended
Served (answr pending) 05/04/2004

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Active 05/26/2004 Notify

Date	Paper	Text
01/28/2004	1.0	Affidavit of indigency and Request for Waiver, substitution or state payment of normal fees & costs, allowed subject to review by Judge (IMPOUNDED)
01/28/2004	2.0	Complaint
01/28/2004		Origin 1, Type E96, Track F.

Commonwealth of Massachusetts

SUFFOLK SUPERIOR COURT

Case Summary

Civil Docket

05/26/2004

02:40 PM

SUCV2004-00377

Robinson, A22594 v Menino Comr et al

Date	Paper	Text
05/03/2004	13.0	SERVICE RETURNED: Michael Primm(Defendant) Certified mail
05/03/2004	14.0	SERVICE RETURNED: John A Martel(Defendant) Certified mail
05/03/2004	15.0	SERVICE RETURNED: Wayne Rock(Defendant) Certified mail
05/03/2004	16.0	SERVICE RETURNED: Garrett Mitchell(Defendant) Certified mail
05/03/2004	17.0	SERVICE RETURNED: Charlie Hardley(Defendant) Certified mail
05/04/2004	18.0	SERVICE RETURNED: Paul F. Evans (Defendant) Certified Mail
05/12/2004	19.0	Motion of WCB-TV (Channel 5, Boston) and Hearst-Argyle Station Inc to extend time to answer to & including 30 days (w/o opposition)
05/21/2004		Certified copy of petition for removal to U. S. Dist. Court of Defts. Paul F. Evans, James Wyse, Michael Primm, John A. Martel, Wayne Rock, Garrett Mitchell and Charles Hardy U. S. Dist. #(04CV-11023RCL).
05/26/2004		Case REMOVED this date to US District Court of Massachusetts

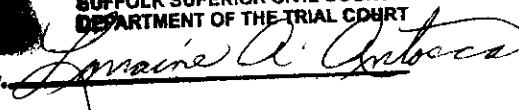
I HEREBY ATTEST AND CERTIFY ON

MAY 27, 2004, THAT THE

FOREGOING DOCUMENT IS A FULL,
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE,
AND IN MY LEGAL CUSTODY.

MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE
SUFFOLK SUPERIOR CIVIL COURT
DEPARTMENT OF THE TRIAL COURT

BY



ASSISTANT CLERK.

Commonwealth of Massachusetts
County of Suffolk
The Superior Court

1

CIVIL DOCKET#: SUCV2004-00377-D

RE: Robinson, A22594 v Menino Comr et al

TO: Leon Robinson, A22594
Old Colony Correctional Center
1 Administration Road
Bridgewater, MA 02324

NOTICE OF DOCKET ENTRY

You are hereby notified that on **01/28/2004** the following entry was made on the above referenced docket:

Affidavit of indigency and Request for Waiver, substitution or state payment of normal fees & costs, allowed subject to review by Judge (IMPOUNDED)

Dated at Boston, Massachusetts this 23rd day of February, 2004.

Michael Joseph Donovan,
Clerk of the Courts

BY:
Assistant Clerk

HEREBY ATTEST AND CERTIFY ON
MAY 27, 2004, THAT THE
FOREGOING DOCUMENT IS A FULL,
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE,
AND IN MY LEGAL CUSTODY.

Telephone: 617-788-8110

MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE
SUFFOLK SUPERIOR CIVIL COURT
DEPARTMENT OF THE TRIAL COURT

BY: 

ASSISTANT CLERK.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss,

Superior Civil Trial Court
Docket#

04-0377 D

LEON ROBINSON,

v.

COMMISSIONER FOR THE CITY OF BOSTON;
AND THE COMMISSIONER FOR THE BOSTON POLICE DEPARTMENT, ET AL.,

CIVIL ACTION COMPLAINT

This is a Civil Rights Action, filed by Plaintiff, Leon Robinson, a Suffolk County Jail Pretrial detainee, for damages and injunctive relief under 42 U.S.C. §1983, and Massachusetts State Civil Rights Act, pursuant to M.G.L. c. 12, §§ 11H and 11I, alleging unlawful entry and search and seizure of his personal property in violation of 18 U.S.C. §2236 and the due process and equal protection clause of the Fourth and Fourteenth Amendment to the United States Constitution and the Massachusetts Declaration of Rights and Massachusetts Statutory Laws.

-Jurisdiction-

1. This court has jurisdiction over plaintiff's claims of violation of the Massachusetts State Civil Rights Act Under Massachusetts General Laws chapter 12, §§ 11H and 11I.

2. This court has concomitant jurisdiction over the plaintiff's State and Federal Constitutional Rights pursuant to Title 42 U.S.C. §1983.

-Venue-

3. This action may be commenced in this Honorable Court, where as plaintiff is a resident of Suffolk County and defendants has a place of business in

Suffolk County, for the City of Boston at 1Schroeder Plaza, Boston, Ma., and where the alleged illegal Breaking and Entering, Search and Seizure mention herein to place.

-Parties-

4. The Plaintiff, Leon Robinson, is a pretrial detainee and incarcerated at the Old Colony Correctional Center in Bridgewater, MA.

5. Defendant, Thomas Manino, is the Commissioner for the City of Boston and is responsible for overseeing all administrative Departments, duties and procedures for the City of Boston, and his place of business is located at Boston City Hall, One City Hall Square, Boston, MA. He is being sued in his Official Capacities.

6. Defendant "John Doe,I" is the Commissioner for the Boston Police Department and employed by the City of Boston, and is responsible for overseeing all administrative duties and procedures for the Boston Police Department, and S/He has a place of business located at 1 Schroeder Plaza, Boston, Ma. S/He is sued in S/He individual and official capacities.

7. Defendant, James Wyse, Is a homicide detective for the Boston Police Department and employed by the City of Boston, and is in charge of the daily operations and supervision of the homicide unit and its employees, and is responsible for overseeing the execution of valid search warrants. He is sued in his official and individual capacities.

8. Defendant Michael Primm, is a homicide detective for the Boston Police Department and employed by the City of Boston, and is generally responsible for investigating reported homicides in the City of Boston. And is also responsible for obtaining and executing valid search warrants and the collection and preservation of seized evidence. He is sued in his official

and individual capacities.

9. Defendant, John A. Martel, is a homicide detective for the Boston Police Department and employed by the City of Boston, and is generally responsible for investigating reported homicides in the City of Boston. And is also responsible for obtaining and executing valid search warrants, and the collection and preservation of seized evidence. He is sued in his official and individual capacities.

10. Defenfant, Wayne Rock, is a homicide detective for the Boston Police Department and employed by the City of Boston, and is generally responsible for investigating reported homicides in the city of Boston. And is also responsible for obtaining and executing valid search warrants, and the collection and preservation of seized evidence. He is sued in his official and individual capacities.

11. Defendant, Garrett Mitchell, Is a homicide detective for the Boston Police Department and employed by the City of Boston, and is generally responsible for investigating reported homicides in the City of Boston. And is also responsible for assisting, obtaining and executing valid search warrants, and the collection and preservation of seized evidence. He is sued in his official and individual capacities.

12. Defendant, Charlie Hardly, is a Technician for the Boston Police Department, homicide unit, and employed by the City of Boston,,and is generally responsible for assisting homicide detectives in the collection and preservation of seized evidence and photographing crime scenes and other places of investigation with valid search warrants. He is sued in his official and individual capacities.

13. All the named defendants mention herein have actd, and continue to act

under color of State and Federal laws at all times relevant to this complaint.

-Facts-

14. On or about February 21, 2001 defendants mention herein, members of the Boston Police Department, Homicide Unit, committed an act of Breaking and Entering of plaintiff's resident at 27 Spring Street, apt.#53, in West Roxbury, MA., without plaintiff's consent, permission or knowledge and in the absent of a valid search warrant, and photograph, search, seized and confiscated items of personal property.

15. On the date mention above, plaintiff was contacted by defendant Michael Primm, and agreed to meet with him and other members of the Boston Police Department, Homicide Unit.

16. Subsequent to the meeting with Michael Primm, Plaintiff was taken into custody and search by defendants James Wyse, John A. Martel and Wayne Rock.

17. During the search of plaintiff's person, defendant Michael Primm, confiscated and seized several items of personal affect i.e., apartment keys, car keys, cellular phone and other tenable items.

18. Shortly thereafter, defendant, John A. Martel, allegedly obtained a search warrant to search plaintiff's resident at 27 Spring Street, apt.#53, in West Roxbury, MA.,

19. Subsequently defendants James Wyse, Michael Primm, John A. Martel, Wayne Rock and Garrett Mitchell executed a invalid search warrant at plaintiff apartment at 27 Spring Street, apt.#53, West Roxbury, MA., by Breaking and entering plaintiff's apartment without his consent, permission or knowledge and in the absent of a valid search warrant.

20. During the entering of plaintiff's apartment defendants mention herein authorized and allowed members of the American Broadcasting Company (ABC-Nightline News 24/7 show) without plaintiff's consent, permission or knowledge and in the absent of a valid search warrant.

21. During the execution of the invalid search warrant several items of personal property was seized by the named defendants herein, in addition, defendant Charlie Hardly took several photographs of the exterior, interior and personal affects of the plaintiff i.e., Bedroom, Livingroom, personal pictures of plaintiff's family members and living quaters.

22. Members of the American Broadcasting Company (ABC-Nightline News) also was allowed to film the execution of the invalid search warrant and the exterior, interior and personal affects of plaintiff and his family i.e., Bedroom, Livingroom, personal pictures of plaintiff family members and clothes while the defendants mention herein conducted their illegal search of plaintiff's apartment without plaintiff's consent, permission or knowledge which was aired on ABC affiliate and other associated television stations.

23. Plaintiff has suffered a miscarriage of justice and his constitutional rights has been violated by the named defendants mention herein.

25. On information and belief, if the defendant's mention herein had obtain a valid search warrant and conducted a proper search of the plaintiff's apartment without the present of the American Broadcasting Company, a miscarriage of justice and deprivation of plaintiff's constitutional rights would not have been violated

-Claimes For Relief-

26. The failure of defendant John A. Martel, to properly obtain a valid search warrant to search plaintiff's apartment constitutes a Civil Rights violation under Massachusetts Statutory Laws.

27. The actions of defendant John A. Martel, in obtaining a invalid search warrant and Breaking and Entering plaintiff's apartment constitutes "deliberate indifference" and further denied the plaintiff the due process and equal protection clause of the Fourth and Fourteenth Amendment to the United States Constitution and the Massachusetts Declaration of Rights.

28. The Failure of Defendants Michael Primm, James Wyse, Wayne Rock and Garrett Mitchell to properly investigate, obtain and execute a valid search warrant, and to collect and preserve a seized evidence from plaintiff's apartment constitutes a civil rights violation under Massachusetts Statutory Laws.

29. The actions of defendants Michael Primm, James Wyse, Wayne Rock and Garrett Mitchell in Breaking and Entering plaintiff's apartment without his consent, permission or knowledge in the absent of a valid search warrant constitutes "deliberate indifference" and further denied the plaintiff the due process and equal protection of clause of the Fourth and Fourteenth Amendment to the United States Constitution and the Massachusetts Declaration of Rights.

30. The actions of defendant Charlie Hardly, in unlawfully entering plaintiff's apartment without his consent, permission or knowledge in the absent of a valid search warrant and photographing and seizing plaintiff's personal property constitutes "deliberate indifference" and further denied the plaintiff the due process and equal protection clause of the Fourth and Fourteenth Amendment to the United States Constitution, Massachusetts Declaration of Rights and Massachusetts Statutory Laws.

31. The actions of defendants James Wyse, John A. Martel, Michael Primm, Wayne Rock, Garrett Mitchell and Charlie Hardly in authorizing American Broadcasting Company employees (ABC-Nightline News Team) to enter into

into plaintiffs apartment without his consent, permission or knowledge and "filmed" the interior and exterior of plaintiff's apartment along with personal affects and aired it on various television stations constitutes "deliberate indifference" in violation of the Fourth Amentment to the United States Constitution.

32. The failure of the defendants James Wyse, John A Martel, Michael Primm, Wayne rock, Garrett Mitchell and Charlie Hardly to stop the American Broadcasting Company employees (ABC-Nightline News Team) from entering and filming plaintiff's apartment which was aired on various television stations affiliate and associated with American Broadcasting Company constitutes "deliberate indifference" and further denied the plaintiff the due process and equal protection clause of the Fourth Amendment to the United States Constitution, Massachusetts Declaration of Rights and the Massachusetts Statutory Laws.

33. The failure of defendants Thomas Manino and "John Doe, I" to have in place adequate provisions and policies for obtaining, screening and executing valid search warrants and to take appropriate disciplinary or other action to curb the known pattern of neglect and abuse of executing invalid search warrants by the Boston Police Department, Homcide Unit employees and staff, which constitutes "deliberate indifference" and contributed to proximately caused the above described violation of the Fourth and Fourteenth Amendments to the United States Constitution and the Massachusetts Declaration of Rights.

-Prayers For Relief-

WHEREFORE, plaintiff requests that the court grant the following herein:

A. Issue a declaratory judgement stating that:

1. The refusal to obtain a valid search warrant to search the plaintiff's apartment by defendants Michael Primm, John A. Martel, Wayne Rock, Garrett Michell and James Wyse violated the plaintiff's rights under the Fourth and Fourteenth Amendment to the United States Constitution and constituted an act of Breaking and Entering under Massachusetts Statutory Laws and the Declaration of Rights.

2. Defendant Charlie Hardly's actions in photographing the exterior and interior of plaintiff's apartment without his consent, permission or knowledge violated the plaintiff's rights under the Fourth Amendment to the United States Constitution and constitutes an act of Breaking and Entering and Criminal trespassing under Massachusetts Statutory Laws and The declaration of Rights.

3. Defendants Michael Primm, John A. Martel, Wayne Rock, Garrett Michell, James Wyse and Charlie Hardly's failure to obtain and execute a valid search warrant to enter plaintiff's apartment without plaintiff's consent, permission or knowledge violated the plaintiff's rights pursuant to Title 18 U.S.C.A. §2236, and Title 42 U.S.C.A. §1983, who all acted under color of State and Federal Laws.

4. Defendants Michael Primm, John A. Martel, Wayne Rock, Garrett Michell, James Wyse and Charlie Hardly's failure to stop American Broadcasting Company (ABC-Nightline News Team) from entering plaintiff's apartment without his consent, permission or knowledge and filmed plaintiff's living quarters which